in the area of the criminal process. *E. g., Mackey* v. *United States,* 401 U. S. 667; *Hill* v. *California,* 401 U. S. 797; *Desist* v. *United States,* 394 U. S. 244; *Linkletter* v. *Walker,* 381 U. S. 618. But the problem is by no means limited to that area. The earliest instances of nonretroactivity in the decisions of this Court—more than a century ago—came in cases of nonconstitutional, noncriminal state law. *E. g., Gelpcke* v. *City of Dubuque,* 1 Wall. 175; *Havemeyer* v. *Iowa County,* 3 Wall. 294; *Railroad Co.* v. *McClure,* 10 Wall. 511.[9] It was in a noncriminal case that we first held that a state court may apply its decisions prospectively. *Great Northern R. Co.* v. *Sunburst Oil & Refining Co.,* 287 U. S. 358. And, in the last few decades, we have recognized the doctrine of nonretroactivity outside the criminal area many times, in both constitutional and nonconstitutional cases. *Cipriano* v. *City of Houma,* 395 U. S. 701; *Allen* v. *State Board of Elections,* 393 U. S. 544; *Hanover Shoe* v. *United Shoe Machinery Corp.,* 392 U. S. 481; *Simpson* v. *Union Oil Co.,* 377 U. S. 13; *England* v. *State Board of Medical Examiners,* 375 U. S. 411; *Chicot County Drainage Dist.* v. *Baxter State Bank,* 308 U. S. 371.

In our cases dealing with the nonretroactivity question, we have generally considered three separate factors. First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, see, *e. g., Hanover Shoe* v. *United Shoe Machinery Corp., supra,* at 496, or by deciding an issue of first impression whose resolution was not clearly foreshadowed, see, *e. g., Allen* v. *State Board of Elections, supra,* at 572. Second, it has been stressed that "we must . . . weigh the merits

[9] These cases were decided in the era before *Erie R. Co.* v. *Tompkins, supra,* n. 5. The first case involving nonretroactive application of state law concerned interpretation of the Mississippi Constitution. *Rowan* v. *Runnels,* 5 How. 134.

and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." *Linkletter* v. *Walker, supra,* at 629. Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity." *Cipriano* v. *City of Houma, supra,* at 706.

Upon consideration of each of these factors, we conclude that the Louisiana one-year statute of limitations should not be applied retroactively in the present case. *Rodrigue* was not only a case of first impression in this Court under the Lands Act, but it also effectively overruled a long line of decisions by the Court of Appeals for the Fifth Circuit holding that admiralty law, including the doctrine of laches, applies through the Lands Act. See, *e. g., Pure Oil Co.* v. *Snipes,* 293 F. 2d 60; *Movible Offshore Co.* v. *Ousley,* 346 F. 2d 870; *Loffland Bros. Co.* v. *Roberts,* 386 F. 2d 540. When the respondent was injured, for the next two years until he instituted his lawsuit, and for the ensuing year of pretrial proceedings, these Court of Appeals' decisions represented the law governing his case. It cannot be assumed that he did or could foresee that this consistent interpretation of the Lands Act would be overturned. The most he could do was to rely on the law as it then was. "We should not indulge in the fiction that the law now announced has always been the law and, therefore, that those who did not avail themselves of it waived their rights." *Griffin* v. *Illinois,* 351 U. S. 12, 26 (Frankfurter, J., concurring in judgment).

To hold that the respondent's lawsuit is retroactively time barred would be anomalous indeed. A primary purpose underlying the absorption of state law as federal

law in the Lands Act was to aid injured employees by affording them comprehensive and familiar remedies. *Rodrigue* v. *Aetna Casualty & Surety Co., supra,* at 361, 365. Yet retroactive application of the Louisiana statute of limitations to this case would deprive the respondent of any remedy whatsoever on the basis of superseding legal doctrine that was quite unforeseeable. To abruptly terminate this lawsuit that has proceeded through lengthy and, no doubt, costly discovery stages for a year would surely be inimical to the beneficent purpose of the Congress.

It would also produce the most "substantial inequitable results," *Cipriano* v. *City of Houma, supra,* at 706, to hold that the respondent "slept on his rights" at a time when he could not have known the time limitation that the law imposed upon him. In *Cipriano* v. *City of Houma, supra,* we invoked the doctrine of nonretroactive application to protect property interests of "cities, bondholders, and others connected with municipal utilities"; and, in *Allen* v. *State Board of Elections, supra,* we invoked the doctrine to protect elections held under possibly discriminatory voting laws. Certainly, the respondent's potential redress for his allegedly serious injury—an injury that may significantly undercut his future earning power—is entitled to similar protection. As in *England* v. *State Board of Medical Examiners, supra,* nonretroactive application here simply preserves his right to a day in court.[10]

---

[10] We do *not* hold here that *Rodrigue,* in its entirety, must be applied nonretroactively. Rather, we hold only that state statutes of limitations, applicable under *Rodrigue*'s interpretation of the Lands Act, should not be applied retroactively. Retroactive application of all state substantive remedies under *Rodrigue* would not work a comparable hardship or be so inconsistent with the purpose of the Lands Act.

Both a devotion to the underlying purpose of the Lands Act's absorption of state law and a weighing of the equities requires nonretroactive application of the state statute of limitations here. Accordingly, although holding that the opinion of the Court of Appeals reflects a misapprehension of *Rodrigue,* we affirm its judgment remanding this case to the trial court.

It is so ordered.

MR. JUSTICE DOUGLAS.

Rodrigue v. *Aetna Casualty & Surety Co.,* 395 U. S. 352, does not, with all respect, require reversal in this case. Accordingly, I would affirm the judgment of the Court of Appeals without reaching the question of the retroactivity of *Rodrigue.*

Rodrigue, like the present case, arose under the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. § 1331 *et seq.* That Act created a federal cause of action for offshore injuries enforceable in the federal courts, but made state laws applicable. 43 U. S. C. § 1333 (a)(2).

In *Rodrigue,* La. Civ. Code Ann., Art. 2315 (1970) was relevant, which provides in part: "The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased . . . ."

In the present case Art. 3536 of the Code is applicable and it reads: "The following actions are also prescribed by one year:

> "That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or quasi offenses."

The latter limitation is "prescriptive" only, *i. e.* that while the Louisiana remedy is barred, the right is not. Under Art. 3536, the limitation runs only to the *remedy*

and would not be applicable in another forum applying the substantive right. *Istre* v. *Diamond M. Drilling Co.*, 226 So. 2d 779, 794–799 (La. App. 1969). Respondent, therefore, argues that the federal doctrine of laches is the only limitation upon his right of recovery and that it is inapplicable where, as here, there is no prejudice to the defendant and any delay in filing the lawsuit was reasonably excusable. See, *e. g.*, *Akers* v. *State Marine Lines*, 344 F. 2d 217.

The Louisiana courts consider the distinction between *peremptive* and *prescriptive* limitations important; [1] and by reason of the federal statute, making Louisiana law applicable, federal courts are bound by the distinction. *Richards* v. *United States*, 369 U. S. 1. As stated in *Rodrigue* the federal Act "supplemented gaps in the federal law with state law through the 'adoption of State law as the law of the United States.'" 395 U. S., at 357.

In *Rodrigue*—an action for wrongful death—the right is extinguished, if the action for recovery is not brought within a year of the death. *Kenney* v. *Trinidad Corp.*, 349 F. 2d 832; *Mejia* v. *United States*, 152 F. 2d 686. Under Art. 3536—which governs here—Louisiana law holds that it is merely a "procedural restraint which bars the remedy, but does not extinguish the right." *Fidelity & Casualty Co.* v. *C/B Mr. Kim*, 345 F. 2d 45, 50 (CA5 1965). See also *Page* v. *Cameron Iron Works*, 259 F. 2d 420, 422 (CA5 1958); *Jackson* v. *Continental*

---

[1] *Guillory* v. *Avoyelles R. Co.*, 104 La. 11, 15, 28 So. 899, 901 (1900):

"When a statute creates a right of action and stipulates the delay within which that right is to be executed, the delay thus fixed is not properly speaking one of *prescription*, but is one of *peremption*.

"Statutes of prescription simply bar the remedy. Statutes of peremption destroy the cause of action itself. That is to say, after the limit of time expires the cause of action no longer exists; it is lost."

Southern Lines, 172 F. Supp. 809 (WD Ark. 1959); *Succession of Pizzillo*, 223 La. 328, 65 So. 2d 783 (1953); *Devoe & Raynolds Co.* v. *Robinson*, 109 So. 2d 226 (La. App. 1959).

A district court, sitting in diversity jurisdiction in Arkansas, applied these principles of Louisiana law and held—properly in my mind—that Art. 3536 did not bar an action filed more than one year after the injury complained of. *Jackson* v. *Continental Southern Lines*, *supra*. See also *Page* v. *Cameron Iron Works*, *supra*. That decision is in perfect harmony with long-established rules of conflict of laws.[2] A different result

---

[2] G. Stumberg, Principles of Conflict of Laws 146–147 (3d ed. 1963):

"The traditional reaction in Conflict of Laws . . . has been that ordinarily limitation is procedural. This view was taken by the Dutch jurists, and where the question arises out of a general statute, it is the view generally accepted by Anglo-American courts. The result is that in the absence of a statute to the contrary in most jurisdictions, when the claim is based upon foreign facts, even though the foreign period of limitation has not run, the plaintiff may not recover if the time allowed for suit at the forum has expired. Conversely, if the foreign period has expired, suit may nevertheless be brought at the forum if the time specified there has not run." (Footnotes omitted.)

Accord, Restatement of Conflict of Laws §§ 603–604 (1934); Restatement (Second) of Conflict of Laws §§ 142, 143 (1971); 3 J. Beale, Conflict of Laws § 584.1 (1935); B. Currie, Conflict of Laws 232–234, 255 (1963); A. Ehrenzweig, Conflict of Laws 428–436 (1962); H. Goodrich, Conflict of Laws 267 (4th ed. 1964); Ailes, Limitation of Actions and the Conflict of Laws, 31 Mich. L. Rev. 474 (1933); Comment, The Statute of Limitations and the Conflict of Laws, 28 Yale L. J. 492 (1919).

While still sitting on the Court of Appeals for the Second Circuit, Mr. Justice Harlan said:

"In actions where the rights of the parties are grounded upon the law of jurisdictions other than the forum, it is a well-settled conflict-of-laws rule that the forum will apply the foreign substantive law,

should not obtain here where federal jurisdiction, 43 U. S. C. § 1333, flows from a head other than diversity.

Apart from traditional conflict of laws is the congressional mandate to apply state laws to these federal causes of action. If we are faithfully to apply the state law of Louisiana we would apply here not the Louisiana *peremption* rule applied in *Rodrigue* but the Louisiana *prescriptive* rule applicable to the instant personal injury case.

Today's decision conflicts with *Levinson* v. *Deupree*, 345 U. S. 648, where the District Court was enforcing in admiralty, a state cause of action for wrongful death. Although procedural irregularities in the appointment of the administrator would have barred—under the state statute of limitations—an action in state court, we held that federal courts were free to formulate their own procedural rules. If we were to follow *Levinson*, we would not bind federal courts to state rules of procedure designed to have no application beyond the state forum for which they were created.[3] Cf. *Byrd* v. *Blue Ridge*

---

but will follow its own rules of procedure." *Bournias* v. *Atlantic Maritime Co.*, 220 F. 2d 152, 154 (CA2 1955).

Mr. Justice Harlan went on to hold that a Panamanian statute of limitations was not applicable where a Panamanian statutory right was being enforced under the admiralty jurisdiction of the Federal District Court.

[3] The majority supports its limitation on actions by saying that "we are not dealing with mere 'housekeeping rules' embodied in state law. Cf. *Hanna* v. *Plumer*, 380 U. S. 460, 473." *Ante*, at 103 n. 6. This conclusion, however, is directly contrary to the characterization given the prescriptive limitation by Louisiana courts:

". . . It is conceded by the five defendants-appellees that had plaintiff filed this suit in the federal court, the doctrine of laches would apply. The cases cited by plaintiff . . . were filed in the federal forum and are distinguished on this basis.

"But plaintiff chose the State forum. Plaintiff may have preferred some procedural advantages afforded in the State court, such

Electric Cooperative, 356 U. S. 525, 533–539; *Angel* v. *Bullington,* 330 U. S. 183, 192; *Atkins* v. *Schmutz Manufacturing Co.,* 435 F. 2d 527 (CA4 1970); Note, 71 Col. L. Rev. 865 (1971).

Today's decision also conflicts with our decision in *Richards* v. *United States, supra.* There, the Federal Tort Claims Act referred us to the local law for a rule of decision, just as *Rodrigue* and the Lands Act do in the present case. We concluded that the Act "require[d] application of the whole law of the State where the act or omission occurred," 369 U. S., at 11, including its conflict of laws decision.[4] If we were to follow *Richards* and *Rodrigue* in the present case, we would apply Louisiana's

---

as: agreement of only nine of twelve jurors needed; ability to call under cross-examination any employee of a party as opposed to the federal rule wherein the right to call witnesses under cross-examination is limited to executive or top supervisory personnel; no procedural vehicle provided for directed verdict or judgment n. o. v. in State court; or shorter delay in State court between filing petition and trial. Having chosen the State forum, he is bound by State procedural rules. The argument that uniformity requires us to import the Federal procedural law of laches rather than use the Louisiana procedural law of prescription, is unacceptable. If we adopt the federal procedural rule in this instance, it would logically follow that more Louisiana procedural rules will, for the same reason, be abandoned in the future. We hold that our State courts are bound to apply State procedural rules." *Istre* v. *Diamond M. Drilling Co., supra,* at 794.

The court then concluded, "The applicable Louisiana prescription statute, LSA–C.C. Art. 3536, is procedural." *Id.,* at 794–795.

[4] The majority would limit *Richards'* reasoning "that federal courts should not create interstitial federal common law when the Congress has directed that a whole body of state law shall apply." *Ante,* at 105 n. 8. It is precisely because we must apply the "whole body" of state law, however, that we should apply the Louisiana interpretation of that law and not use the prescriptive rule to bar an action in a federal forum. H. Hart & H. Wechsler, The Federal Courts and the Federal System 456–457 (1953).

prescriptive rule as it has been construed by Louisiana courts and not use it to bar an action in a different forum.

For in that other forum—here the federal district court—Louisiana law allows the federal court, consistently with conflict of laws, to apply a different limitation than Louisiana would apply in her own courts.

In *Rodrigue*, we said:

> "The purpose of the Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be federal law of the United States, applying state law only as federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act." 395 U. S., at 355–356.

We then concluded: "It is evident from this that federal law is 'exclusive' in its regulation of this area, and that state law is adopted only as surrogate federal law." *Id.*, at 357.

Since the federal court is not a Louisiana forum,[5] the Louisiana law of *prescription* permits enforcement of this claim after Louisiana's one-year statute has run.[6] Therefore, if we are to be faithful to the federal scheme we must apply Louisiana law; and Louisiana law would

[5] The majority acknowledges that the federal court still retains its identity as a federal forum when it indicates that it is not to "function as it would in a diversity case," *ante*, at 103 n. 5, and that only certain state rules are adopted, *ante*, at 103 n. 6.

[6] *O'Sullivan* v. *Felix*, 233 U. S. 318, does not require a contrary result because there we considered only whether Art. 3536 could be applied to a federal action in a federal court and not how it should be applied. Petitioner conceded that his action was barred if Art. 3536 applied and "the sole question pressed by counsel and which we [were] called upon to decide [was] the application of the state statute to the conceded [federal] cause of action." *Id.*, at 321.

not apply *Rodrigue* in a personal injury case where the suit is not brought in a Louisiana forum.

The Court of Appeals, speaking through our leading admiralty authority, Judge Brown, so held and went on to rule that in harmony with Louisiana's *prescriptive* rule this personal injury suit was not barred under the laches doctrine familiar to maritime law.

This is not a stale claim and its assertion after the one-year period ran was not prejudicial; no prejudice was indeed pleaded. Cf. *Holmberg* v. *Armbrecht*, 327 U. S. 392.

One who reads this record will be impressed with the grave injustice of applying the Louisiana one-year statute as if it were *peremptive*, rather than *prescriptive*. Death comes with a finality lacking in some personal injury cases; and the rigid rule applied in *Rodrigue* can do no injustice. But personal injuries are often lingering and one may not know for months whether he is partially or permanently crippled, whether he must be retrained for wholly different work, and so on. In this case it took some months after the injury for respondent (1) to realize that he could not return to his old work, and (2) to discover the kind of work he could do.

If we followed Louisiana law, as Congress directed, we would affirm the judgment of the Court of Appeals, reflecting as it does good law and a measure of justice not always allowable when the rigidity of *Rodrigue* governs a case.